

REMARKS

Reconsideration of the subject application is respectfully requested.

The specification has been amended as suggested by the Examiner in paragraph 3 of the office action. The Applicants express appreciation to the Examiner for renumbering the final claim as claim 33.

Claims 1-33 are pending in the present application. Claims 1, 7, and 15 are presently amended. Claims 16-31 are presently cancelled.

Claims 1, 2, 4, 5, 14, 16, and 30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Park et al. (U.S. Patent No. 6,904,320). According to the Examiner, claim 1 stands rejected because Park et al. discloses a method of treating sleep disordered breathing comprising the step of electrical stimulation of nerves to increase muscle tone of upper airway muscles. Claim 1 is presently amended to include the step of determining the likelihood of the patient being asleep and applying stimulation when the patient is likely to be asleep and is presently distinct from Park et al. This limitation is not addressed in Park et al. It is believed that claim 1 is now in condition for allowance. In addition, because claims 2, 4, 5, and 14 depend from claim 1, it is believed that those claims are also in condition for allowance.

In addition, the Examiner rejects claims 3, 6, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Park et al. in view of Kallok (U.S. Patent No. 5,158,180). However, claims 3, 6, and 13 are dependent from the presently amended claim 1. As presently amended, the claim includes the step of determining the likelihood of the patient being asleep and applying stimulation

when the patient is likely to be asleep. This limitation is not disclosed or suggested in Park et al or in Kallok. Therefore, it is believed that the claims are presently in condition for allowance.

In addition, the Examiner rejects claims 7, 10-12, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Park et al. in view of Bowers (U.S. Patent No. 5,207,230). Claim 7 is presently amended and is distinct from Park et al. and Bowers. As presently amended, claim 7 includes the step of determining the likelihood of the patient being asleep and applying stimulation when the patient is likely to be asleep. This limitation is not disclosed or suggested by Park et al. or Bowers. In addition, claims 10-12 and 32 are dependent from the presently amended claim 7. Therefore, it is believed that claims 10-12 and 32 also are presently in condition for allowance.

In addition, the Examiner rejects claims 8, 9, 15, and 31 under 35 U.S.C. § 103(a) as being unpatentable over Park et al. in view of Bowers and Kallok. Claim 7 is presently amended and is distinct from Park et al., Bowers, and Kallok. As presently amended, claim 7 includes the step of determining the likelihood of the patient being asleep and applying stimulation when the patient is likely to be asleep. This limitation is not disclosed or suggested by Park et al., Bowers, or Kallok. Claims 8 and 9 depend from claim 7 and it is believed that as a result of the present amendment to claim 7, claims 8 and 9 are presently in condition for allowance.

Claim 15 has been amended to include the limitations of a real time clock for determining time of day and a position sensor for sensing postural state.

Support for these limitations exists in the specification page 4, lines 12-23. Neither of these limitations is disclosed or suggested in Park et al., Bowers, or Kallok. Therefore, it is believed that claim 15 is in condition for allowance.

Finally, claim 33 depends from amended claim 7 and it is now believed that claim 33 is in condition for allowance.

It is believed that the present application is now in condition for allowance.

Respectfully submitted,
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